IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.8679 of 2007

1. Jaiprayakash Bapuso Patil
and another ..Petitioners

vs.

1. Balaso Tukaram Aitwade
and others ..Respondents.

Shri S.S.Patwardhan for petitioners
Shri M.R.Suryavanshi for respiondent no.1 to 3
Shri R.M.Patne, A.G.P. for respondent no.4

CORAM: S.C.DHARMADHIARI J.
14th December, 2007

P.C.

1. Rule. Shri Suryavanshi for respondent nos.1 to and Shri Patne, A.G.P. for respondent no.4 waive service. By consent Rule taken up for hearing forthwith.

2. This is a writ petition to challenge the direction/decision of the Asstt.Registrar, Cooperative Societies, Hatkanangale, Taluka Hatkanangale, District Kolhapur directing that the petitioner/money lender is obliged to hand over the property to the original owner, namely, respondent no.1 herein.

3. The grievance of the petitioners before me

is that without in any manner holding that he is a money lender and without in any manner recording the requisite satisfaction the order has been passed by the Asstt.Registrar. My attention is invited to section 13A and 13B of the Money Lenders Act, 1946 and decision of the learned Single Judge of this Court in the case of Ramesh Daulatrao Gawhale and ors. Vs.State of Maharashtra and others reported in 2007(1) Bom.C.R.751d. It is urged that the petitioners cannot be directed to return the immovable property as immovable property is out of the purview of the provisions of the Money Lenders Act referred to above.

4. Shri Suryavanshi, learned Counsel appearing for respondent nos. 1 to 3, supports the impugned order.

5. I have perused the impugned order and the application which was made by respondent nos. 1to 3 to the Asstt.Registrar.

6. The application prays for issuance of a certificate that the petitioners before me are money lenders and that illegal money lending activities are being conducted by them. It is

also brought to my notice that there is a reply thereto by the petitioners in which a specific contention is raised that the petitioners are not money lenders.

7. My attention is invited to Exhibit C page 21 which is titled as "Enquiry Report" under sec.13A.

8. After perusing the entire report/decision, I am of the view that prima facie the order passed by the Asstt.Registrar is without jurisdiction. He did not have before him any application for return of the property. Secondly, he did not have before him the enquiry report based upon which the requisite satisfaction under sec.13B(1) of the Act is contemplated.

9. The enquiry report and decision are rolled into one. If there is enquiry report or Exhibit C is to be treated as one, then, the Asstt.Registrar was obliged to not only take cognisance of the request of respondent nos.1 to 3 but to record his satisfaction in terms of section 13B after the report is perused by him. Section 13B(1) reads thus:

> "13B:Disposal of property pledged with money lender carrying on business of money lender without valid licence:(1) If upon the inspection of records and documents made under section 13A, the inspecting officer is satisfied that the money lender is in possession of property pledged to him by a debtor as security for the loan advanced by the money lender in the course of his business of money lending without a valid licence, the inspecting officer shall require the money lender to deliver forthwith the possession of such property to him."

10. In my view, the impugned order, therefore, cannot be sustained and is required to be quashed and set aside on the sole ground that it is not in accordance with section 13B(1).

11. However, if there is enquiry report on record and respondent nos.1 to 3 apply to the Asstt. Registrar afresh by submitting and furnishing proper details of transaction, then, it is open for the Asstt.Registrar to pass fresh orders in accordance with law. The

Asstt.Registrar, then, to abide by the provisions of the Money Lenders Act and law laid down by this Court. He should pass appropriate orders afresh without being influenced by his earlier orders. The petition is allowed in the above terms. Rule made absolute. No order as to costs.

(S.C.DHARMADHIKARI J.)